

EPA REGION 6 ANNUAL PRETREATMENT PROGRAM WORKSHOP

Federal, State, and Local Enforcement of Pretreatment Programs

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Pretreatment Program Enforcement

Basis of Enforcement

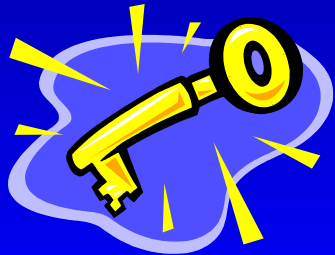
- ▶ The basis of federal, state and local enforcement for the pretreatment program is the Clean Water Act from which regulations, rules and ordinance provisions are developed to control significant industrial users (SIUs).



Pretreatment Program Enforcement

Cooperation is key

*Cooperative effort between federal,
state, and local regulatory
environmental agencies is essential to
protect water quality.*



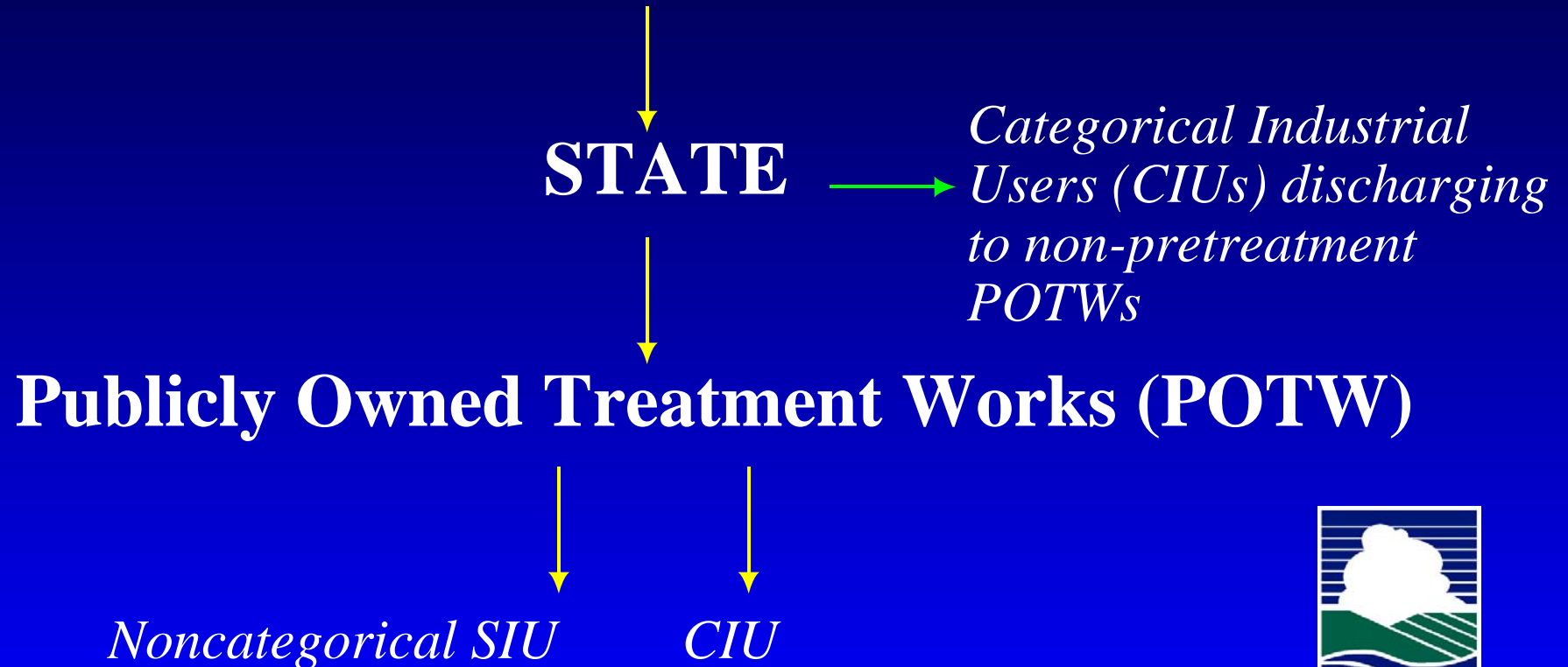
APPROVAL
AUTHORITY

working with the

CONTROL
AUTHORITY

National Pollutant Discharge Elimination System

U.S. Environmental Protection Agency (EPA)



Pretreatment Program Federal Regulations

Local Pretreatment Programs

- ▶ *40 Code of Federal Regulations (CFR)§403.9 - Contents of the submission of a POTW pretreatment program*
- ▶ The attorney's statement needs to state that the POTW has the authority to enforce against industrial users (IUs) in the event of noncompliance with the pretreatment standards and requirements



Pretreatment Program Federal Regulations

Program Requirements Affecting IUs

- ▶ §403.5 - General and specific prohibitions
- ▶ §403.6 - Categorical standards
- ▶ §403.7 - Removal credits
- ▶ §403.13 - Variances for fundamentally different factors
- ▶ §403.15 - Net/Gross calculation



Pretreatment Program Federal Regulations

Industrial User Reporting Requirements

- ▶ §403.12 - POTW and IU reporting requirements
- ▶ Includes requirements for SIUs to report to the Approval Authority when discharging to a POTW without an approved pretreatment program



Pretreatment Program Federal Regulations

Specific IU Rights

- ▶ §403.16 - Upset provisions (federal court only in Texas)
- ▶ §403.17 - Bypass provisions



Pretreatment Program Federal Regulations

Miscellaneous Requirements

- ▶ §403.2 - Objectives of the National Pretreatment Program
- ▶ §403.3 - Definitions, especially IU and SIU
- ▶ §403.4 - State or local law
- ▶ §403.14 - Confidentiality



LEGAL AUTHORITY

*The key to effective enforcement
program implementation*



LEGAL AUTHORITY

- ✓ POTW shall operate pursuant to legal authority enforceable in federal, state, and local courts
- ✓ Authorized by state law
- ✓ Enacted by local regulations:
 - ▶ Sewer use ordinance
 - ▶ Rules and regulations
 - ▶ Contracts, joint powers agreements



LEGAL AUTHORITY

- ▶ Ensure legal authorities listed in 40 CFR §403.8 (f)(1) are included in the adopted ordinance
- ▶ Successfully implement and enforce a local pretreatment program



LEGAL AUTHORITY

Requirements

- ▶ Must enable POTW to enforce all national pretreatment standards
- ▶ Establish control mechanisms as legally binding documents
- ▶ Require compliance with applicable Pretreatment standards and requirements



LEGAL AUTHORITY

Requirements

- ▶ Require IUs to develop compliance schedules where necessary
- ▶ Inspect, monitor, and survey IUs to determine compliance or noncompliance
- ▶ Enforce standards to obtain remedies for noncompliance by IUs



Interjurisdictional Issues

Enforcing against IUs outside of your political jurisdiction

- Contracts or other agreements are necessary to control discharges from IUs located in other jurisdictions
- Delineate responsibilities of the control authorities (CAs) and multijurisdictional partners
- Some CAs agree to assist multijurisdictional partners in the enforcement actions according to contract agreements



Enforcement

The primary responsibility for enforcing the pretreatment program rests with the POTW at the local level, and 40 CFR §403.8 (f) (5) contains the requirement to develop and implement an enforcement response plan (ERP).



Enforcement Response Plan

The ERP describes the elements of enforcement

- ▶ The ERP describes how the CA will:
 - ▷ *Investigate noncompliance* - data from self-monitoring, inspections, compliance monitoring, surveillance monitoring
 - ▷ *Specify actions for violations* - not all violations will receive the same initial type of response, i.e. notice of violation, administrative order



Enforcement Response Plan

The ERP describes the elements of enforcement

- ▶ The ERP describes how the CA will:
 - ▷ *Address types of escalating enforcement responses*
 - the range of actions needs to be based on the nature and severity of the violation and other relevant information
 - ▷ *Designate officials responsible for each type of response* - the level of the enforcement action should determine who will take the action



Enforcement Response Plan

The ERP describes the elements of enforcement

- ▶ The ERP describes how the CA will:
 - ▷ *Incorporate pollution prevention alternatives (optional)* - remedies to eliminate the problem



Enforcement Remedies

☞ Administrative

- *Notices of violation* - an official communication from the CA to the noncompliant IU which informs the user that a pretreatment violation has occurred.
- *Liquidated damages (not for contracts)* - type of administrative fines.
- *Citations* - monetary citation or ticket issued onsite.



Enforcement Remedies

☞ Administrative Orders

- *Show Cause Orders* - directs the IU to appear before the CA, explain its noncompliance and show cause why more severe enforcement actions against the user should not go forward.
- *Consent Orders* - an agreement between the CA and the IU that normally contains three elements:
1) compliance schedules; 2) stipulated fines or remedial actions and; 3) signatures of the CA and industry representatives.



Enforcement Remedies

☞ Administrative Orders

- *Cease and Desist Orders* - directs the IU to cease illegal or authorized discharges immediately or to terminate its discharge altogether. In nonemergency situations, this order may be used to suspend or permanently revoke an IU permit.
- *Compliance Orders* - directs the IU to achieve or restore compliance by a date specified in the order.



Enforcement Remedies

☞ Civil Litigation

- *Consent Decree* - agreements, signed by a judge, between the CA and the IU reached after a lawsuit has been filed.
- *Injunctions* - court orders which direct parties to do something or refrain from doing something. A CA would seek injunctive relief if the delays involved in filing a suit would result in irreparable harm.



Enforcement Remedies

👉 Civil Litigation

- *Civil penalties and cost recovery* - a successful civil suit may force the IU to pay for all expenses that the CA incurred in responding to the non-compliance, including restoration of the POTW, payment for medical treatment of injured employees, and compensation to the CA for all fines assessed against it for NPDES permit violations.



Enforcement Remedies

👉 Criminal Prosecution

- *Criminal prosecution* - the formal process of charging individuals and/or organizations with violations of ordinance provisions that are punishable, upon conviction, by fines and/or imprisonment.
- *Criminal penalties* - those penalties for ordinance violations listed in the provision of the ordinance authorizing criminal penalties
- *Imprisonment* - felonies and misdemeanors have different times for imprisonment



Enforcement Remedies

☞ Supplemental

- *Increased monitoring/reporting*
- *Termination of service*
- *Public notice*
- *Pollution prevention activities, including development of an environmental management system (EMS)*



Enforcement Response Guide

Elements of an Enforcement Response Guide (ERG)

- ☞ Standard operating procedures, in matrix form, for enforcement actions:
 - *Promotes consistent and timely use of enforcement remedies and eliminates uncertainty and confusion*
 - *Lists violations that are anticipated*
 - *Describes enforcement actions*
 - *Outlines escalation of enforcement practices*



Enforcement Response Guide

Elements of an ERG

- ☞ Standard operating procedures for enforcement actions, including:
 - *Identification of personnel responsible for each enforcement action*
 - *Time frames for the review of data and for initiating enforcement actions*
 - *Due dates for enforcement responses from IUs*
 - *Time frames for escalation of enforcement activities*



Standard Operating Procedures

- ▶ Receive and analyze reports and other notices submitted by IUs
- ▶ Sample and analyze effluent from IUs
- ▶ Conduct surveillance and inspection activities
- ▶ Investigate instances of noncompliance



Standard Operating Procedures

- ▶ Ensure all sampling, analysis, and other information is collected to produce evidence admissible in enforcement proceedings
- ▶ Comply with public participation requirements
 - ★ Annual local newspaper publishing of IUs in significant noncompliance (SNC)



Standard Operating Procedures

- ▶ *All tasks are important*
- ▶ *Thorough documentation*
- ▶ *Quality assurance and quality control*
- ▶ *Details, details, details!*



Resources

- ▶ Funding
- ▶ Qualified Personnel
- ▶ Essential Equipment



Factors Affecting Resources

- ▶ Size of treatment system
- ▶ Number and type of industries
- ▶ Interjurisdictional relationships
- ▶ Political considerations
- ▶ Consulting/Laboratory services



Funding Alternatives

- ▶ Fees:
 - Monitoring, Permitting, Program
- ▶ Penalties/Fines

These cannot be used in place of limitations and standards:

- ▶ Surcharges for Excessive Conventional Pollutants
- ▶ Toxic Pollutant Strength Charges



Personnel

Adequate personnel for the pretreatment program size

- ▶ Pretreatment Coordinator
- ▶ Permitting
- ▶ Sampling and Inspection
- ▶ Review of Reports
- ▶ Enforcement
- ▶ Clerical



Equipment

*Adequate equipment for the pretreatment program
size*

- ▶ Sampling Equipment
- ▶ Vehicles
- ▶ Flow and pH Meters
- ▶ Safety Equipment
- ▶ Analytical Equipment
- ▶ Surveillance Equipment
- ▶ Computers



SUMMARY

Components of a Pretreatment Program in 40 CFR §§403.8(f) (1)-(6)

- ▶ Legal authority
- ▶ Procedures
- ▶ Funding
- ▶ Local limits
- ▶ Enforcement response plan
- ▶ Maintain a list of significant industrial users

